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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)**

In re A.P. et al., Persons Coming Under the
Juvenile Court Law.

C087110

SACRAMENTO COUNTY
DEPARTMENT OF CHILD, FAMILY
AND ADULT SERVICES,

(Super. Ct. Nos.
JD238466, JD238467)

Plaintiff and Respondent,

v.

N.C.,

Defendant and Appellant.

N.C., mother of minors A.P. and R.P., appeals from the juvenile court's orders adjudging the minors dependents, removing them from parental custody, and denying her reunification services. (Welf. & Inst. Code, §§ 361, 361.5, & 395.)¹ Mother contends the juvenile court erred in denying her reunification services under section 361.5, subdivisions (b)(4) and (e). We shall affirm.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

On September 20, 2017, section 300 petitions were filed on behalf of two-year-old A.P. and three-year-old R.P. The petitions alleged that the minors came within the provisions of section 300, subdivisions (b)(1) and (f) (causing death of another child), and (j) (abuse or neglect of sibling), based upon the death of the minors' 11-month-old sibling, K.P. K.P.'s death occurred when he was left unattended in a bath with running water for an unknown amount of time while mother went downstairs to use the restroom and fell asleep. The petitions also alleged that the parents failed to provide adequate care of the minors based upon the condition of the home: "piles of clothing, garbage, rotten food debris, dirty dishes piled high with old rotten food inside, the tile floor covered in dirt and old food, and cockroaches through the home," as well as razors, unidentified pills, syringes, "cleaning chemicals, drug paraphernalia, and an open syringe loaded with a brown liquid substance, in reach of the children." There were also choking hazards on the minors' bedroom floor and an abundance of dirty diapers overflowing the trash can and on the bathroom floor.

Mother told law enforcement deputies that she placed her three sons, R.P., A.P., and K.P., in the bathtub together in an upstairs bathroom. Mother turned the water on, put baby shampoo in the water, and left the children unattended while she went downstairs to use another bathroom. Mother did not know how long she was downstairs because she took a book with her and fell asleep. She was awoken by R.P., who had come downstairs and was calling her name. Mother followed R.P. upstairs into the bathroom and turned off the water. The tub was fuller than she had ever seen it as it was going into the emergency drain. A.P. was standing in the rear of the tub, up to his waist in water. Mother could not see K.P. at first but, after she pulled the drain plug, she saw K.P. unresponsive and floating on his side in the water. Mother grabbed K.P. from the bathtub, screamed for father and ran downstairs with K.P. Father and his friend, who had

been smoking in the garage at the time, performed CPR on K.P. while mother dialed 911. Water came out of K.P.'s mouth during CPR. K.P. was pronounced dead at the hospital.

During the interview on the night of the incident, mother kept falling asleep and was difficult to awaken. Mother stated she had not smoked marijuana in several weeks, denied any methamphetamine use, denied any drug use, and stated she did not have any medical conditions which would make her sleep. A warrant was obtained for a blood draw/toxicology screen and mother's sample tested positive for amphetamine and methamphetamine.

Prior to his death, K.P. had not had any medical issues. He had been seen on three occasions in the four weeks after his birth and was noted to be a healthy infant and growing adequately. K.P. had not been seen by a doctor since November 4, 2016. An autopsy was performed on K.P. but the report was not complete, and no official cause of death was made because there was an outstanding toxicology test. Thereafter, the final autopsy report could take up to two months to be released. On October 18, 2017, the toxicology results were provided to the court and indicted that K.P. tested negative for all the screened drugs.

Child Protective Services had a prior substantiated referral in February 2016 for physical abuse and general neglect, based on domestic violence between the parents. The parents had refused services.

The combined jurisdiction/disposition hearing took place over several months and concluded on April 25, 2018. After hearing testimony from the parents, the social workers, and the visitation monitor, the juvenile court took jurisdiction under section 300, subdivisions (f) (causing death of another child) and (j) (abuse or neglect of sibling), declared minors A.P. and R.P. dependents, and ordered them removed from parental custody. The juvenile court provided reunification services for father, but bypassed mother pursuant to section 361.5, subdivisions (b)(4) (parent caused death of another

child) and (e) (parent incarcerated and reunification services detrimental to minors). In bypassing mother for reunification services, the juvenile court expressly found mother's neglect caused K.P.'s death, that reunification services were not in the minors' best interests, and that mother was currently incarcerated and reunification services would be detrimental to the minors.

DISCUSSION

1.0 Denial of Services Pursuant to Section 361.5, Subdivision (b)(4)

Mother contends the juvenile court's bypass order is not supported by substantial evidence because, in the absence of an autopsy confirmation, it could not reasonably be determined that her neglect caused K.P.'s death. We disagree.

When a child is removed from the parent's home, reunification services may be offered to the parent, “ ‘in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]’ [Citations.] Section 361.5, subdivision (b) sets forth certain exceptions—also called reunification bypass provisions—to this ‘general mandate of providing reunification services.’ ” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) “When the court determines a bypass provision applies, the general rule favoring reunification is replaced with a legislative presumption that reunification services would be ‘ “an unwise use of governmental resources.” ’ ” (*Ibid.*)

Section 361.5, subdivision (b)(4) provides for the denial of reunification services to a parent who has caused the death of another child. “[I]t is ‘ “[t]he enormity of a death” ’ of a child arising from parental inadequacy that invokes the provisions of sections 300 and 361.5. [Citations.] The Legislature has clearly provided that when one's abuse or neglect has had this tragic consequence, there is a proper basis for a finding that his or her surviving child[ren] may be made . . . dependent[s] of the juvenile court, and that, if the circumstances then also justify the child[ren]'s removal from the

parent's or guardian's physical custody, a presumption against reunification should arise." (*In re Ethan C.* (2012) 54 Cal.4th 610, 634.) A parent's acts or omissions are considered a legal cause of a child's injury if they were a "substantial factor in bringing it about." (*In re Z.G.* (2016) 5 Cal.App.5th 705, 716.) We review an order denying reunification services for substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.)

Mother argues there was insufficient evidence that her conduct or neglect caused K.P.'s death because the cause of his death cannot be determined without a conclusive coroner's or pathologist's report. We, like the juvenile court, reject this contention. An autopsy result or conclusive medical evidence is not necessary to establish that mother caused K.P.'s death. The cause of K.P.'s death can be proven by direct or circumstantial evidence. (See *People v. Towler* (1982) 31 Cal.3d 105, 112-113, 117-118.)

As found by the juvenile court, there is absolutely no evidence to support a finding that K.P. died of anything other than drowning in the bathtub in which mother left him unattended. While mother speculates that he "may have died of some other as-yet unknown cause," K.P. had no known medical issues and the posthumous toxicology report revealed negative results for all tested substances. Mother did not indicate he was demonstrating any concerning behavior or health issues when she left him in the bathtub. Nonetheless, when she returned, K.P. was floating on his side in the water and unresponsive. Water came out of his mouth when CPR was attempted. There was sufficient clear and convincing evidence that mother's acts and/or omissions were the causal agents of K.P.'s death.

2.0 Minors' Best Interests

Mother also contends that, even if there was sufficient evidence for the juvenile court to deny services under section 361.5, subdivision (b)(4), it abused its discretion in

not finding that reunification services were, nonetheless, in the children's best interests. We find no abuse of discretion.

When a juvenile court finds a basis for denying reunification services under section 361.5, subdivision (b)(4), the court is prohibited under subdivision (c), from ordering reunification services unless it finds, by clear and convincing evidence, that reunification would serve the children's best interests. (§ 361.5, subd. (c); *In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) The parent responsible for the previous death of another child bears the burden of affirmatively showing at the dispositional hearing that reunification would be in the best interests of the surviving children. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) In *Ethan N.*, the court analyzed the concept of a child's best interest in the context of a positive finding under section 361.5, subdivision (b)(4). (*In re Ethan N.*, at pp. 63-69.) In so doing, the court recognized the enormity of the responsible parent's burden to prove best interests and cautioned that a successful showing would be rare. (*Id.* at p. 68.)

To determine whether reunification is in a child's best interest, the juvenile court considers the parent's current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child bond; and the child's need for stability and continuity. (*In re A.G.* (2012) 207 Cal.App.4th 276, 281; *In re Allison J.*, *supra*, 190 Cal.App.4th at p. 1116; *In re William B.*, *supra*, 163 Cal.App.4th at p. 1228.) There must be some reasonable basis to conclude that reunification services will succeed, and reunification is possible before services are offered to a parent to whom they need not be provided. (*In re William B.*, at pp. 1228-1229.)

The juvenile court has broad discretion when determining whether reunification services would be in the minors' best interests. (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1228.) We reverse that determination only for abuse of discretion. (*Id.* at pp. 1228-1229; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Here, the juvenile court considered, in depth, the relevant factors. It considered mother's fitness and history, and the gravity of the problem that led to the dependency. The juvenile court noted that mother not only had a history of placing the young minors in the bathtub unattended,² she also had a history of leaving the minors unattended at other inappropriate times. For example, mother's neighbor told the social worker that she had seen the minors left unattended outside for up to an hour on numerous occasions, had found the youngest sucking on a battery, and seen one of the minors in a diaper walking by himself down the road that leads to the street. After the death of K.P., R.P. was observed to be very parentified toward A.P., warning his younger sibling to be careful of things and telling him what to do. Mother also has a history of substance abuse, including substance abuse around the time of K.P.'s drowning, and was observed to fall asleep at inappropriate times. Additionally, on the night of K.P.'s drowning, the house was filthy and stench-ridden, and contained drug paraphernalia within the minors' reach.

With respect to mother's current efforts, the juvenile court acknowledged that mother had been engaging in services while incarcerated. But the court also noted that between the time of K.P.'s drowning and mother's incarceration, mother engaged in services but was not compliant. During that period, mother hitchhiked to San Francisco, missed drug testing, smoked marijuana, and missed scheduled visits with the minors.

Finally, the juvenile court found that, while the minors do have a bond with mother, they also have a need for stability and continuity. Although mother had been the primary caregiver of the young minors, they had been in foster care for seven months by the conclusion of the disposition hearing. Mother had been incarcerated since November 5, 2017, and since that time, she had phone visits with the minors, primarily

² Father stated he was usually in the next room during the minors' bath. Mother stated she was usually in the general area, and within earshot, and she did not worry about the minors in the bathtub together.

consisting of them saying they missed and loved each other. On the other hand, there had been no reported problems with the minors' placement.

In sum, the juvenile court considered the appropriate factors and did not abuse its discretion in finding mother failed to meet her burden that reunification services are in the best interests of the minors. This is not that rare case where it is an abuse of discretion to deny reunification services to a parent who has caused the death of a child.

Because we affirm the juvenile court's order bypassing mother for reunification services pursuant to section 361.5, subdivision (b)(4), we do not address the additional and alternative ground for the bypass of services under section 361.5, subdivision (e). (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76-77 [§ 361.5, subd. (e), permitting reasonable reunification services for incarcerated parents contemplates such services only in absence of other disqualifying ground listed in subd. (b)].)

DISPOSITION

The judgment and orders of the juvenile court are affirmed.

_____, J.
s/BUTZ

We concur:

_____, P. J.
s/RAYE

_____, J.
s/BLEASE